

## **City of Sandy Springs Board of Ethics Meeting held January 14, 2009.**

**Board Members Present:** Charles Maddrey, Richard Isenberg, Kirk Childs, Glenn Moffett, Andrew Heyward, Alternates Susan Langlais and Kevin King.

**Staff and Representatives Present:** Michael Casey, Assistant City Attorney Kathy Williams and Assistant City Attorney Cecil McLendon.

### **Call to Order**

**Chairman Maddrey** called the meeting to order at 4:00 p.m.

### **Roll Call**

**Interim City Clerk Casey** called the roll.

### **Approval of Agenda**

**Motion and Vote:** Mr. Moffett moved to approve the Agenda as submitted. Mr. Heyward seconded the motion. The motion carried unanimously.

**Motion and Vote:** Mr. Isenberg moved to amend the agenda and add an item under New Business titled Ethics Issues. Mr. Heyward seconded the motion. The motion carried unanimously.

**Motion and Vote:** Mr. Moffett moved to approve the Agenda as amended. Mr. Heyward seconded the motion. The motion carried unanimously.

Chairman Maddrey stated that the minutes of the October 8, 2008 meeting are not ready for approval at this time.

### **Education**

**Chairman Maddrey** stated that this has been an ongoing dilemma with this group. A lot will depend on how the Ethics Ordinance is written. Further discussion will be delayed until the new Board Chairman is determined.

### **Committee Reports**

**Chairman Maddrey** stated that he emailed all Board Members a copy of the "Findings of Fact" prepared by David Davidson from the hearing on the Wiley complaint.

**Motion and vote:** Mr. Heyward moved to approve the "Findings of Facts" on the Wiley complaint prepared and submitted by David Davidson. Mr. Isenberg seconded the motion. The motion carried unanimously.

Chairman Maddrey stated that he will submit a signed copy of all who participated in the "Findings of Fact" for the record and will ask the City Clerk to send a copy to Mr. Wiley, the Mayor and City Council.

The City's Ordinance as it presently reads states "All regular scheduled meetings will be on the second Wednesday of the first month of each quarter which for 2009 is January 14, April 8, July 8 and October 14.

### **Revisions to the Ethics Ordinance and Bylaws – Wendell Willard**

**Assistant City Attorney McLendon** explained that he was drafted into this without a lot of background information. It is his understanding that there was an ordinance that was promulgated by the Board that went to the Mayor and Council. His understanding is when the draft Ordinance went before them it was considered, and then there was direction to modify it. The primary direction was that the scope of the Ordinance would encompass the Mayor and Council; all appointees to Boards; and anyone exercising the authority of the Mayor and Council as delegated out and as allowed either by the Charter or other ordinance. Kathy Williams cleaned up some of the definitions in the ordinance and made some language changes. Substantially, the biggest change in this is the definition as to who is captured by this as a public servant.

Mr. Maddrey stated that the changes Assistant City Attorney McLendon is referring to are changes to the revised Ordinance the Ethics Board reapproved in the September meeting. The Board reviewed the ordinance and the by-laws, submitted a revision and what Mr. McLendon is referring to is a revision on the revision.

**Assistant City Attorney Kathy Williams** stated that these are the revisions to the revision made by the Board.

Mr. Maddrey stated that one of the major changes the Board wanted to make is the role of the Alternate, which was put in the Board's revisions. He did not hear any concerns on this from Council among the other revisions they had. These revisions were put together using many different sources. The Board looked at Ethics Ordinances from a lot of different places: GMLA, GMA and from many cities and then put the proposed revisions together. The Board feels very strongly that the Ethics Ordinance should set a minimum standard for elected officials, appointed officials, contract officials, and CH2M HILL OMI staff. What he thinks he heard from the minutes of the Work Session is that the City Council felt that any ethics issues with employees should be handled by departments. The Board had asked for oversight and Council said no, the City Manager and departments could handle the ethic issues. He read from the minutes that the Council does not think that the Ethics Ordinance pertains to all employees. There is not a minimum standard employees have to meet. This is a major change from what he had heard. He is very concerned about it. His final point, the Ethics Board role is as an advisor. The Board does not make the policy, but gives advice. He has never given advice to anyone that he didn't believe in. He will have a very hard time approving the Ethics Ordinance because it is not minimum standards for all the employees. He can handle not having the right of a hearing for employees, if that is Council's wish.

Mr. Moffett stated that he was caught by surprise at the Work Session. He was not happy the City Manager had talked to Council members without letting the Board know. The City Manager brought it up at the Work Session and did not give the Board the benefit of knowing his concern in how this was being handled.

The original ordinance was put together, drafted and re-drafted; worked on from week to week, month to month. The Ethics Committee put a lot of time into the draft and presented the Ordinance to City Council and City Council approved it. The City operated under the ordinance for a period of time, and then the Board was asked to review the ordinance for any possible changes; and if the Board had any new ideas, to present them to the City Council. This is what the Board did. It was at this meeting that we got sandbagged. The City of Sandy Springs City Charter says this about ethics: "To adopt ethics ordinances



and regulations governing the conduct of municipal elected officials, appointed officials, and employees, establishing procedures for ethics complaints and setting forth penalties for violations of such rules and procedures". This is in the City Charter given by the State of Georgia. It is clear to him that tampering with it too much, the City could get into trouble. In addition to this, the original ordinance is based upon suggestions from the Georgia Municipal Association, who drafted a form Municipal Code. The City's Ordinance is comparatively set up according to that Code, and we were admitted into the Association because of the well drafted Ordinance the Board presented to council. This is a City of Ethics; the City received a plaque for this.

At the Work Session meeting Mr. Moffett suggested several alternatives, such as use of the alternate suggested language more effectively. All of a sudden the Council told him what they did not want. Mr. Maddrey and he had talked about a compromise on the issue because of the problem with the Police Department's involvement with a complaint that came before the committee. The Board made a determination when the hearing was held that the police officers involved and their supervisors while they might have been indirectly involved were not directly involved in the ethics issue the Board heard, which happened to be against a Councilmember. The Board deferred to the Police Chief and the Police Department because they had already taken action and had penalized the officers and supervisors involved. The Board decided not to take jurisdiction over it and deferred to the Police Department. Mr. Maddrey, Mr. Moffett and others felt the concern should be addressed to Council that had to do with it being double jeopardy for someone. That someone might have to come before the Ethics Committee and then go before their own supervisor and be penalized before that body as well. The Board had come up with a very good way to approach this and that was to read into the Ordinance a minimum standard that applies to everybody. The Board would be allowed to exercise its discretion, and if the Board ran into a situation where the department was handling an employee's problem and exercising their jurisdiction, then the Board had a choice of deferring to that department. All the department would have to do is tell the Board they were taking care of the ethics issue. Once the Board was advised of this, they were at least meeting the minimum standards, and felt it was an acceptable way to approach this. He still believes this is an acceptable way to approach it. He is totally against removing employees from this ordinance. At the end of the Council meeting, there was some discussion between him and Councilmember Paul. After he read the proposal to him about deferring and having the discretion to defer to another department, Councilmember Paul said that the Board was 90% on the way towards getting everyone's approval. Nobody said anything to the contrary after that. He left the meeting thinking this is something that should be and could be worked out. Now, it seems to have gotten off the track. He is very upset about this and he is not going to support any change in this Ethics law that removes employees. If the Board wants to do it, they will have to do it on their own against his wishes as a Board member.

Mr. Maddrey stated that it does not make sense saying that employees and contract employees do not have to meet the minimum standards.

Mr. Moffett stated that the International Municipal Lawyers Association, which has international codes for everything in this nation, all kinds of boards, cities, counties and states, says this about a public servant; "Any member of the governing body and any agent, department head, employee, official supervisor, volunteer or other person whether elected or appointed or legally authorized by contract or in any other manner to act in any capacity under the authority of the city". This is basically our definition and what is recommended. Ethics are not like laws. We do not seek to compel something; we seek to persuade people to take it upon themselves to act in a certain way. This is the whole idea of an ethics code, and I believe it to be very important.

Mr. Maddrey asked for Board members' opinions or a direction to pursue.

**Andrew Heyward** questioned if there had been feedback from City Council.



Mr. Maddrey stated that he did receive a phone call from Mayor Galambos shortly after the Board reviewed and offered a very fair compromise to the concern Councilmember Paul had. The City Manager saw it, and the Mayor called and said she had talked with the City Manager and wanted the Board to know that the City Council's and her opinion is that the Ethics Board should not have jurisdiction over employees. He questioned if she meant for hearing purposes or did she mean the Ethics Ordinance as a standard. He told her that he would like to think the Ethics Ordinance is a standard for all employees. Mayor Galambos said yes. As far as he knows, that is the only feedback the Board has received from the Mayor and City Council. Mayor Galambos passed this information on to Mr. Willard and since that time, there has been another step where the City Manager has said that he does not think the Ethics Ordinance pertains to the employees at all. This is all he knows. He has not had any Councilmember approach him as Chair with any other concerns.

**Kevin King** questioned if there was any other organization that publishes standards that might apply.

Mr. Maddrey stated that the Fire and Police Departments all have policies that state what they can and cannot do. There is some limit as to what has been written and that's all fine and good as long as it meets the minimum standard that the Board has set up.

Assistant City Attorney McLendon stated he may have an opinion, but the Attorney's opinion is not necessarily relevant. There is a lot of policy involved in this. This is what the Board thinks, and it becomes a dialogue between everybody to come up with the policy that is ultimately implemented. To address this question, one thing out there is the employee handbooks that govern the standards and how the employees are required to act. The employee handbooks have a lot of similar type requirements in them, and you will have a conflict of interest provision. One concern when issues like this comes up and there are multiple sets of rules, which set of rules is the supreme set of rules. This is very problematic from an attorney's position. For Fire and Police he would have to look at three sets of rules and try to bring together what is the standard that he can hold somebody to, especially in the situation of due process where he has to give process if he has different rules, all of a sudden due process becomes more difficult. As an attorney, this is what he has to deal with. Does that mean it's the appropriate policy? Absolutely not. He defers to the Board and the discussions between the two bodies to ultimately come up with what the final ordinance is. This is a legal concern that touches on that issue. If you come up with too many rules rolling around, it can be very problematic.

Mr. Moffett stated that City Council has said they want all policies to conform to one policy, one rule and one ordinance.

**Kirk Childs** stated that if the Boards authority does not reach the employees it defeats the whole purpose of the Ethics Board existence.

Assistant City Attorney McLendon stated that with these revisions the Board has authority over the groups that are appointed and has no one above them for disciplinary purposes. All employees have a chain of command where there is a disciplinary chain. If you have too many chains, it can create legal issues. The Boards that the Mayor and Council appoint have a term and can't be removed except for cause, which is a much different standard than an ethics violation. This is where you have to have the Board because there is no other chain to exercise the discipline or exercise the authority. The Boards have been delegated a lot of authority and responsibility straight from the Mayor and City Council. This is a method by which they get reined in. This definition is for the group of people that does not have another chain and does not answer to a supervisor. It's a policy debate. This is what he understood the policy to be and drafted as such. This has not yet been passed by City Council. There is going to be



another consideration of it. The dialogue has moved from where this Board first was and where they are now and has come back. There will be another dialogue when the Board gives Council its concerns.

Mr. Maddrey stated that this issue has come by way of City Manager. He questioned what is in this Ordinance that's upsetting the City Manager and causing all these problems. As far as he knows the City Manager has not contacted any members of this Board to say he has a concern and wants to talk about it. The Board has sent the City Manager every document. What is it the Board needs to address with the City Manager?

Assistant City Attorney McLendon stated he could not speak to that.

**Assistant City Attorney Kathy Williams** stated that she has not been privy to any conversations about the Ethics Ordinance.

The question was asked what the Board should do if something came up this week or next week that the Board should investigate.

Mr. Maddrey stated that the existing Ordinance is still in place. At this point, the Board needs to decide its next step.

Mr. Moffett stated that the Board could pretty much approve all of the changes. There are only a couple of places the Board might object.

Mr. Maddrey stated that this Board is an advisory committee. The Board can say anything it wants. One should never give advice one doesn't believe. The Board can go back before City Council with recommended changes. This Ordinance does cover all employees as a minimum standard. We can go back to the revision, given to Council, that the Ethics Board would defer any ethics issue to department heads.

Mr. Moffett stated that would be okay as long as the department heads say they will take care of the issue.

Mr. Maddrey stated it's in the City Charter. We shall have one policy for all the reasons, as Mr. Moffett stated earlier. This is the Board's position.

Another position the Board could take is to put "public servant" back in the Ordinance or accept the way it's been presented.

Assistant City Attorney McLendon stated that he spoke with the City Attorney on this, and he thought it would be completely appropriate to designate someone to go in at the time this Ordinance is considered again and express the Board's concerns to the Mayor and Council.

Mr. Maddrey stated that when the Board first presented the document and made a recommendation as a committee, City Council was confused to some extent about how Board members should be appointed. The committee thinks this is the right way; the mayor appoints and Council approves; and the Council approved it. It was a split vote, but was approved.

Mr. Maddrey asked if there was a motion on the recommended presentation to the next Work Session of the City Council on the revised Ethics Ordinance and what it should be.

**Motion and Second:** Mr. Moffett moved that the recommended changes in the Ordinance be accepted with the exception of the public servant definition and not removing the deleted section item on Page 8 of the Ordinance. Mr. Isenberg seconded the motion.

**Discussion on the Motion:** Mr. Moffett stated that this is what was presented to Council the last time. At that time he was told the Board was 90% on its way. He feels this is how it should be presented back to Council.

The question was asked what would happen if Council says no?

Mr. Maddrey explained that Council could vote it down. The Board of Ethics only advises.

Mr. Moffett stated the courts could decide if it violates the City Charter.

Mr. Maddrey questioned if the issue the Board brought up before was clearly stated, that as long as a department head handles an issue, the Board has no jurisdiction.

Mr. Moffett stated that the Board is authorized to defer to hear and rule upon violations upon a determination that the respondent is already subject to similar appropriate proceedings in the department of the City with notification by the Department Head that states the department will adequately address the alleged violation. It could say that the Board is authorized to defer or that the Board will defer.

Mr. Maddrey stated that he is comfortable with this. He feels this is what the Board has worked to develop for the last three years. It makes sense to have one policy and this is a minimum standard.

The statement was made that the Board is not out of line at all to have the language added back in the Ordinance.

Mr. Childs questioned if Council disagrees with the Board, where would that leave the Board as far as what it can do or might do in the future?

Mr. Maddrey stated that Assistant City Attorney McLendon made it very clear that the Board would have oversight for all elected and appointed officials, but not to any CH2M HILL OMI staff or any City employee. It only relates to appointed and elected officials.

Mr. Childs questioned if this would be presented to the Mayor and Council as suggested by Mr. McLendon.

Mr. Maddrey explained City Council meeting procedures. If City Council disagrees with the Board they will direct staff on what needs to be in the Ordinance. The Ethics Board has done its job to the very best of its ability.

Assistant City Attorney McLendon stated that the Board can approve a draft version with the specific changes, present it to Council and explain why the Board changed it back, and hear the Council's thought on it.

**Vote:** The motion carried unanimously.

Mr. Maddrey asked Mr. Moffett if he would work with Ms. Williams to make sure the wording is such as the Board wants it and have Mr. Casey put it on the February Work Session agenda.



**Interim City Clerk Casey** explained that the Council Meeting schedule has changed and that the Work Session is on the first Tuesday of the month. This would be heard at the February 3, 2009, Work Session. The Work Session follows the regular meeting.

### **Installation of Alternates**

**Assistant City Attorney McLendon** swore in Kevin King and Susan Langlais as Alternates to the Board of Ethics at 4:55 p.m.

The Chair designated Kevin King as Alternate No. 1 and Susan Langlais as Alternate No. 2, based on the minutes of the October 21, 2008 City Council meeting.

### **Old Business**

#### **Approval of Findings of Fact from the Wiley Complaint (see attached)**

### **New Business**

#### **Other**

**Mr. Isenberg** attended an Ethics Panel Program that might be interesting from an ethics standpoint, presented by formerly convicted white collar criminals. The company name: Corporate Scared Straight.

Mr. Maddrey asked the City Clerk to keep the card in case the Education Committee wants to do this.

#### **Election of Chairman and Vice Chairman for 2009**

Chairman Maddrey asked if there was a nomination for Chairman for 2009.

**Motion and Vote:** Mr. Isenberg nominated Glenn Moffett for Chairman for 2009. Mr. Heyward seconded the motion. The motion carried unanimously.

Chairman Maddrey asked if there was a nomination for Vice Chairman for 2009.

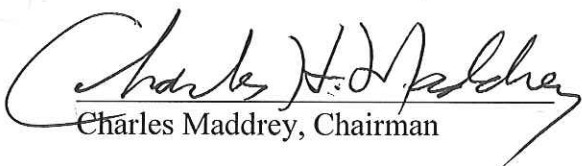
**Motion and Vote:** Mr. Moffett nominated Kirk Childs as Vice Chairman for 2009. Mr. Heyward seconded the motion. The motion carried unanimously.

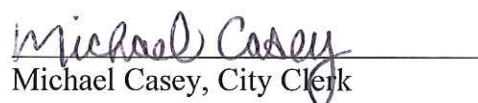
Chairman Maddrey stated that one of the things that has bothered him as Chairman is not being able to call the meeting to order during a hearing. He had to borrow the Mayor's gavel.

Mr. Maddrey presented a gavel to the Board that says Sandy Springs Ethics Board so that the next Chairman will have one to use to call all meetings to order.

### **Adjournment**

**Motion and Vote:** Mr. Moffett moved to adjourn the meeting. Mr. Childs seconded the motion. The motion carried unanimously. The meeting adjourned at 5:03 p.m.

  
Charles Maddrey, Chairman

  
Michael Casey, City Clerk